
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

JOHNNY RAY MARTIN,

Plaintiff,

versus

MAJOR CASSIDY, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:11-CV-485

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Johnny Ray Martin, a prisoner previously confined at the Jefferson County Correctional Facility, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Major Cassidy, Captain Eiselstein, and Naphcare Medical.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the claims against defendants Cassidy and Eiselstein as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

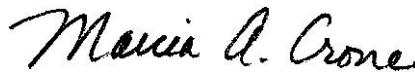
The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. The magistrate judge recommended dismissing the claims against

defendants Cassidy and Eiselstein because plaintiff did not allege any factual basis to hold them liable in their supervisory capacities. Plaintiff objected, alleging that the defendants were negligent. Demonstrating that a defendant was negligent or failed to act reasonably is not enough to show a constitutional violation. *Mace v. City of Palestine*, 333 F.3d 621, 626 (5th Cir. 2003). Therefore, the claims against defendants Cassidy and Eiselstein are frivolous and fail to state a claim upon which relief may be granted.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A partial judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 19th day of December, 2012.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE